

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CHARLES PAUL SOROKA,  
Petitioner,

CV 06-841-MA

OPINION AND ORDER

v.

CHARLES DANIELS, Warden,  
Federal Correctional  
Institution, Sheridan,  
Oregon,

Respondent.

STEPHEN R. SADY  
Chief Deputy Federal Defender  
101 SW Main St, Suite 1700  
Portland, OR 97204  
(503) 326-2123

Attorney for Petitioner

1- OPINION AND ORDER

KARIN J. IMMERGUT  
United States Attorney  
SCOTT ERIK ASPHAUG  
Assistant United States Attorney  
1000 S.W. Third Ave., Suite 600  
Portland, OR 97204-2902  
(503) 727-1008

Attorneys for Respondent

MARSH, Judge.

This matter is before the Court on petitioner Soroka's Petition for Writ of Habeas (#1) pursuant to 28 U.S.C. § 2241. For the following reasons, the court GRANTS the Petition.

Petitioner pleaded guilty to three counts of bank robbery and, in September 2004, was sentenced to 63 months imprisonment. The court ordered petitioner to pay restitution to the victimized banks in the amount of \$7,980.00 pursuant to the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3664. Specifically, as part of the Judgment, the court imposed the following conditions relating to the schedule of restitution payments during the period of supervised release:

Restitution is due and owing in full; If there is any unpaid balance at the time of defendant's release from custody, it shall be paid at the maximum installment possible and not less than \$50.00 per month.

See Schedule of Payments - Supervised Release, ¶ D (emphasis added).

The court also provided for restitution payments while petitioner remained imprisoned:

2- OPINION AND ORDER

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court . . . .

Id. (Emphasis added).

After his term of imprisonment began in September 2004, petitioner entered into an agreement with BOP to pay \$25.00 per quarter under the Bureau of Prisons' voluntary Inmate Financial Responsibility Program (IFRP) towards repayment of the restitution penalty. That amount was later increased to \$50.00 per quarter. In May 2006, petitioner changed his mind and refused to make further restitution payments during his incarceration. As a result, BOP placed petitioner in "IFRP Refuse" status, and has since imposed a number of sanctions against him based on his failure to agree voluntarily to make restitution payments for the remainder of his imprisonment.

Petitioner's habeas claim is limited to the proposition that, under U.S. v. Gunning, 401 F.3d 1145 (9<sup>th</sup> Cir. 2005) (Gunning II), decided after his sentence was imposed, only the court has the authority to set a schedule of restitution payments while petitioner is in prison and that authority cannot be delegated to BOP. See also U.S. v. Gunning, 339 F.3d 948 (9<sup>th</sup> Cir. 2003) (Gunning I)(the court may not delegate the

scheduling of restitution payments to the Probation Office). Petitioner does not challenge the constitutionality of the MVRA or BOP's authority, generally, to use the IRFP to collect fines or restitution assessed against him by the court while he is incarcerated, as long as the monthly schedule of payments is set by the court, not BOP.

Accordingly, petitioner seeks an order vacating BOP's decision to place him in "IRFP Refuse" status, vacating BOP's sanctions imposed against him, and restoring him "to the position he would have been but for BOP's wrongful actions."

Respondent argues Gunning II is distinguishable because petitioner's restitution was "due and payable immediately and petitioner "has the choice whether to make any payments at all while he is incarcerated."

I disagree. In this case, as in Gunning II, the sentencing court did not establish a specific schedule of restitution payments to be collected by BOP while petitioner was serving his prison sentence. BOP's action in doing so under the IRFP, therefore, was unlawful. Accordingly, I conclude the imposition of sanctions against petitioner for his failure to acquiesce in BOP's IRFP restitution payment schedule for petitioner was not in accordance with law. 5 U.S.C. § 706(2)(a)(agency actions will be upheld unless they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.").

**CONCLUSION**

For these reasons, the court GRANTS petitioner's Petition for Writ of Habeas Corpus (#1), and ORDERS BOP to vacate its decision to place him in "IFRP Refuse" status, to vacate all sanctions it imposed against him, and to restore petitioner to the position he would have been but for BOP's decision to place him in "IFRP Refuse" status.

IT IS SO ORDERED.

DATED this 5 day of December, 2006.

/s/ Malcolm F. Marsh  
MALCOLM F. MARSH  
United States District Judge